IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

WRIT APPEAL NO.587 of 2001

K. Kabali @ Kabaleeswaran .. Appellant

vs.

1. State of Tamil Nadu
   rep. by its Secretary to
   Government, Home Department
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Chennai City, Egmore
   Chennai 8.

3. The District Collector
   Chennai District
   Chennai 1. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 16.08.2000 made in Writ Petition No.12633 of 1999 (WP.No.12633/99 presented under Article 226 of the Constitution of India to issue of Writ of Mandamus directing the respondents to pay the enhanced rate of compensation of Rs.4 lakhs (Rupees four lakhs only) for the custodial death of the petitioner's son Ramesh on 12.4.1997)

For appellant : Mr. K.M. Subramaniam
For respondents: Mr. S. Kandasamy
Spl. Govt., Pleader

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal has been filed against the order of the learned single Judge dated 16.08.2000 made in Writ Petition No.12633 of

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1999, in and by which the learned Judge directed the writ petitioner to approach the civil Court for compensation.

2. For convenience, we shall refer the parties as arrayed in the writ petition.

3. According to the petitioner, he is a resident of No.93, Madhav Rao Garden, Mylapore, Chennai 600 004, living with his wife, three daughters and one son. On 12.04.1997, at about 8.00 p.m. when his son Ramesh with his two friends was crossing the road near Luz Corner Signal, Mylapore, Chennai, he was taken by the Traffic Police Constable forcibly threw him into a standing Police Jeep. This was informed to the petitioner by the nearby shop owners. Immediately, i.e., at 9.15 p.m. he went to E.1 Mylapore Police Station and enquired about his son. They informed him that his son escaped from the Police Jeep. He left the police station on the presumption that his son would return home safely. However, on 13.04.1997, he saw the newspaper "Dinakaran" Tamil daily, Chennai Edition, in which the photo of dead body of his son was published stating that his identity is not known. He contacted the E.1 Mylapore Police Station, but they gave evasive reply. Hence, he lodged a complaint on 13.04.1997 to the Assistant Commissioner of Police to take appropriate action against the responsible persons, who committed the murder of his son. The local residents also protested by staging demonstration in front of E.1 Mylapore Police Station. Due to protest and pressure from the public, Press and political parties, the Government acceded to the request for appointment of a Commission to enquire into the circumstances that led to the death of his son Ramesh.

4. On 15.04.1999, the Government announced a sum of Rs.50,000/- as compensation to the petitioner and appointed Mr. Justice Maruthamuthu, a retired Judge of this Court as Commissioner to enquire into the death of his son Ramesh. In the enquiry, he participated and produced several evidence. He came to know from the newspaper reports that the Commission gave its finding and the same was tabled on the Tamil Nadu Assembly on 26.11.1998. In the report it was found that the action of the traffic police Inspector R. Garudapathy and Police Constable G. Velayutham was not in accordance with the Rules and Regulations and finally recommended for a further payment of Rs.50,000/- as compensation to the petitioner. Thus, totally a sum of Rs.1 lakh was paid to the petitioner as compensation for the death of his son Ramesh.

5. It is clear from the information furnished and published in the newspapers that the Police Constable and Inspector working under the Commissioner of Police, Chennai City, second respondent herein were responsible for the death of his son Ramesh. It is also clear that the police had arrested his son without any reasonable cause or whatsoever and they did not even inform his whereabouts to the petitioner, who is none else than his father. Once a person was taken into custody by the Police and as long as he is under their custody, the Police are responsible for

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the safety and security of the person concerned. It is the claim of the petitioner that his son was taken into custody without any default on his part and beaten up severely and then he was taken in a police jeep to the police station. In order to escape from the consequences the police personnel dumped his son's dead body into the nearby Buckingham Canal, creating a scene as if his son escaped from the custody and fell into Buckingham Canal. Therefore, the State, which is bound to ensure the safety and security of its every citizen, is liable to pay just compensation to the affected persons.

6. According to the petitioner, his son is the only breadwinner of his family and all the three daughters are minors. He is suffering without any independent source of income; hence, he filed the above writ petition claiming compensation of Rs.4 lakhs for the death of his son at the hands of the police personnel on 12.04.1997.

7. The second respondent, Commissioner of Police, Chennai City, filed a counter affidavit resisting the allegations made by the petitioner. It is seen from the counter that the deceased Ramesh and his friends were taken in a jeep for committing signal violation. There was an altercation. The Inspector of Police asked the Police Constable to take Ramesh to the police station for enquiry. While the jeep was slowed down, near the bridge, Ramesh managed to jump down from the jeep and took on heels. On seeing this, G.Velayutham, Police Constable, got down and chased him, but he ran away and disappeared. At 22.00 hours, there was an information over phone by an unknown person that a male person jumped into the canal and thus there was a crowd. After searching, the Fire Service, secured a body of a male person, aged about 30 years. On seeing the photograph of the dead body in "Dinakaran" Tamil daily dated 13.04.1997, the nearby residents of Madhav Rao Garden demonstrated to take action on the complaint of Kabali, father of the deceased, suspecting a foul play in the death of Ramesh. In this regard, a request was given by the Inspector for enquiry to the Revenue Divisional Officer. On 14.07.1997, the Government announced appointment of a Commission headed by Mr. Justice Maruthamuthu, a retired Judge of this Court and after enquiry, the Commission submitted a report to the Government. The Government passed final orders on 15.04.1999 in G.O.Ms.No.1(2)PVLO/961(1). There was no abuse or harassment as claimed by the petitioner. The respondents are also not aware of the status of the petitioner or his economic ground.

8. When the above writ petition came up for hearing, the learned Judge, by the impugned order dated 16.08.2000, after finding that the petitioner cannot sustain writ petition claiming compensation and has to approach the Civil Court, dismissed the writ petition, hence, the present writ appeal.

9. Heard Mr. K.M. Subramaniam, learned counsel for the appellant and Mr. S. Kandasamy, learned Special Government Pleader for the respondents.

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10. The only point for consideration in this writ appeal is, whether the petitioner, father of the deceased Ramesh is entitled to the compensation of a sum of Rs.4 lakhs as claimed, from the respondents?

11. Though the learned Judge based on the decision of the Apex Court in Chairman Grid corporation of Orissa Law vs. Sukamani Das (1999 (7) S.C.C. 298), dismissed the writ petition claiming compensation with the liberty to approach the Civil Court, in the light of recent pronouncements, it is not in dispute that in appropriate cases, this Court even by exercising jurisdiction under Article 226 of the Constitution can grant compensation to the victims. The facts of the case as narrated would show how the petitioner has lost his son at the hands of police. Even in the counter it is admitted that while the deceased Ramesh and his friends were crossing the road nearby Luz Corner, for traffic violation there was an altercation between the Traffic Constable on duty and on the direction of the Inspector of Police, he was taken in the police jeep for interrogation. It is the stand of the respondents that while he was taken to police station, the deceased escaped from the slow moving jeep and only on the next day they came to know about his death by way of a news item published in "Dinakaran", Tamil daily. Though the second respondent has stated that the police were in no way responsible for the death, in view of the admission that the deceased was taken by the police personnel near Luz Corner in the police jeep, it is for them to take him to the police station safely.

12. It is also not in dispute that due to the pressure of the public, political parties, media, etc., the Government appointed One Man Commission headed by Mr. Justice Maruthamuthu, a retired Judge of this Court. Though the Commission's report is not before this Court, the fact remains, the Government accepted the findings of the Commission, in G.O.No.SS.II/143-9/98 dated 21.07.1998. The said Government Order reveals that the Commission of Enquiry has found that if Ramesh was not allowed to escape and was taken to the police station safely, the chance of Ramesh himself drowning into the canal and meeting his death might not have occurred. Commission of Enquiry, after noting that the Government granted exgratia payment of a sum of Rs.50,000/- to the father of the deceased (appellant herein), and considering the fact that the deceased Ramesh was aged about 22 years and was an earning member to the family at that time and the family is bereft of income as well as life of the person, suggested to the Government to consider granting of a further sum to the family.

13. After accepting the findings of the Commission of Enquiry, the Government directed the Home Department to take appropriate action against the police personnel, viz., G. Velayutham, Grade I Police Constable, R. Garudapathy, Traffic Police Constable, E.1 Mylapore Police Station for dereliction of duty. The Government, accepting the recommendation of the Commission of Enquiry regarding granting a further sum to the deceased family, sanctioned an exgratia amount of Rs.50,000/- in addition to the

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amount of Rs.50,000/- already paid. It is clear from the findings of the Commission of Enquiry which was accepted by the Government that though the death was not due to police torture, undoubtedly, the death occurred due to the negligence of the police personnel. As rightly observed by the Commission of Enquiry, had Ramesh not been allowed to escape and taken to the police station safely, the chance of Ramesh jumping from the jeep and drowning in the Buckingham Canal might not have occurred. In such a circumstance, we hold that due to the negligence of the police personnel concerned, the death occurred, for which the first respondent Government of Tamil Nadu, Home Department is vicariously liable to pay reasonable compensation to the appellant, who is none else than the father of the deceased.

14. Now, we shall consider the quantum of compensation. As said in the earlier part of our order, in the cases such as custodial death, medical negligence, negligence on the part of the police and public servants, this Court exercising jurisdiction under Article 226 of the Constitution of India can very well award appropriate compensation. In C. Thekkamalai vs. State of Tamil Nadu (2006 91) MLJ 108), the First Bench of this Court after referring various decisions of the Apex Court held that, where public functionaries are involved and the matter relates to violation of fundamental rights or enforcement of public duties, the remedy would still be available under the Constitution, notwithstanding that a suit could be filed for damages. Their Lordships further held that, where a heinous crime of rape was committed by the police personnel, who are public functionaries, the matter clearly relates to the violation of basic human rights as well as Fundamental Rights guaranteed under Article 21 of the Constitution of India and the victim would be entitled to a fair and reasonable compensation. The case before the First Bench relates to rape of a schedule caste lady in police station by the police personnel. The Bench, altogether directed the State Government to pay compensation of a sum of Rs.5 lakh to the victim.

15. In D. Ranganayagi vs. Station of Tamil Nadu etc., and another (2000 (1) LW (Cri.) 96), a learned single Judge of this Court in respect of the custodial death directed the state of pay compensation of Rs.5 lakhs.

16. In Ruth Mary & another vs. The Commissioner Corporation of Chennai and another (2004 WLR 176), a learned single Judge following the decision rendered by one of us (P. Sathasivam,J.) in Writ Petition No.16084 of 1993 (Matsa Gandhi D. vs. Tamil Nadu Slum Clearance Board) directed the Corporation of Madras to pay compensation for the death of three children in a Corporation toilet and septic tank.

17. In R. Dhanalakshmi vs. Govt., of Tamil Nadu (2004 WLR 346) a learned single Judge in respect of custodial death, taking note of age and income of the deceased, family circumstance, dependency, etc., by applying multiplier as provided in the Motor Vehicles Act, fixed compensation of Rs.9 lakhs.

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18. In Malkiat Singh vs. State of U.P. (1998 (9) S.C.C. 351 in respect of death of his son Dalvinder Singh in an encounter, the Hon'ble Supreme Court directed the State to pay Rs.5 lakhs to the petitioner by way of compensation.

19. In Ajab Singh vs. State of U.P. (2000 (3) S.C.C. 521) in the case of custodial death, the Hon'ble Supreme Court directed the State of U.P. for payment of Rs.5 lakhs. The said direction is in addition to the claim of compensation in civil law proceedings against those responsible for the death.

20. The above decisions make it clear that where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the aggrieved person can very well approach this Court for necessary relief, including compensation under Article 226 of the Constitution of India. In the affidavit, the petitioner has specifically stated that he had one son (K. Ramesh, since deceased) besides three daughters (according to the learned counsel, in para 2 of the affidavit it is wrongly mentioned as 2 daughters). During the course of arguments, it is brought to our notice that all the three daughters are yet to be married and according to the petitioner for want of financial assistance he is not in a position to perform the marriage of his daughters. It is also stated that the petitioner since retired is not an earning member and he does not own any property. It is useful to mention that even the Commission of Enquiry has observed that the entire family was depending on the deceased and he was the only breadwinner. It is not disputed that altogether the petitioner, father of the deceased was paid Rs.1 lakh i.e., Rs.50,000/- at the first instance by the Government and another sum of Rs.50,000/- on the recommendation of the Commission of Enquiry.

21. Taking note of the findings of the Commission of Enquiry that the police personnel were negligent in their duty which resulted in the death of the deceased Ramesh at the age of 22, considering the family circumstances and of the fact that the petitioner being a retired employee has to look after three grown up daughters, we are of the view that ends of justice would be met by directing the State Government i.e., first respondent to pay a further amount of Rs.3 lakhs (Rupees three lakhs only) as compensation in addition to the amount already paid. The State Government is directed to invest the above mentioned amount of Rs.3 lakhs (Rupees three lakhs only) within a period of four weeks from the date of receipt of a copy of this order in the name of the petitioner/appellant, viz., K. Kabali, in fixed deposit, initially for a period of three years with Tamil Nadu Power Finance Corporation. It is made clear that the petitioner would be entitled to receive interest accrues on such deposit once in three months. After expiry of the said period of three years, the petitioner/appellant is permitted to withdraw the amount and share the same with his three daughters equally.

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With the above directions, the writ appeal is allowed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to
   Government,
   State of Tamil Nadu
   Home Department
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Chennai City, Egmore
   Chennai 8.

3. The District Collector
   Chennai District
   Chennai 1.

4. The Chairman and Managing Director.
   Tamilnadu Power Finance and
   Infrastructure Development Corporation Ltd.,
   490, 3rd and 4th Floor,
   Nandanam, Annasalai, Chennai-35.

1 cc To Mr.K.M.Subramanian, Advocate, SR.10731.
1 cc To The Government Pleader, SR.10814.

P.D.Judgment in
W.A.No.587 of 2001

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